

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

SEMINOLE ELECTRIC COOPERATIVE, INC.,

Employer,

AND

Case No. 12-RC-256815

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 108, AFL-CIO,**

Petitioner.

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**EMPLOYER’S REQUEST FOR REVIEW OF
REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

Employer, Seminole Electric Cooperative, Inc. (“SEC”), by and through undersigned counsel and pursuant to Section 102.67 of the National Labor Relations Board’s (the “NLRB” or “Board”) Rules and Regulations, hereby submits its Request for Review of the Regional Director’s Decision and Direction of Election issued on May 18, 2020 (the “Regional Director’s Decision” or “Decision”), which is attached hereto as Exhibit A.

I. SUMMARY OF ARGUMENT

SEC seeks review of the Regional Director’s Decision that it is appropriate to conduct a mail-ballot election in the instant circumstances. The Board’s review of the Regional Director’s Decision is appropriate for two reasons. First, the instant matter is distinguishable from the Board’s other decisions that the undersigned located in which the Board denied the employers’ request for review of the regional director’s decision to conduct a mail-ballot election due to COVID-19. Critically, the instant election will involve a bargaining unit of only ten employees, whereas the three other decisions in which the Board denied review and found that a mail-ballot election was warranted due to COVID-19 involved 149, 84, and 90 employees. As the bargaining

unit in the instant matter is significantly smaller than the bargaining units in the previous cases addressed by the Board involving COVID-19 related elections, a manual election can be held safely at SEC's facility. The Regional Director, who relied heavily upon one of the aforementioned Board decisions, failed to consider this substantial factual difference. Second, the Board, in very recent decisions, has recognized that there are inherent issues with mail-ballot elections and that the Board is open to addressing the criteria in which mail ballots are appropriate in lieu of a manual election.

Thus, in light of the Board's long-standing policy that generally favors conducting a manual election, the significantly limited number of employees in SEC's bargaining unit, the Board's recent recognition of problems associated with mail ballots, and the willingness of the Board to consider the criteria in which mail-ballot elections should occur, it is appropriate for the Board to consider whether the Regional Director abused his discretion in ordering a mail-ballot election.

II. PROCEDURAL BACKGROUND

On February 21, 2020, Petitioner, International Brotherhood of Electrical Workers, Local 108, AFL-CIO ("Petitioner"), filed a petition with the Board seeking to represent a unit of full-time employees of SEC. *See* Exhibit A, p. 2. SEC and Petitioner stipulated that the bargaining unit proposed by Petitioner was appropriate for the purposes of collective bargaining, and as such, the parties executed a Stipulated Election Agreement on March 4, which was approved that day by the Regional Director. *See* Exhibit A, p. 2. The Stipulated Election Agreement called for a manual election to be conducted on March 24 at SEC's workplace. *See* Exhibit A, p. 2. However, on March 18, due to safety and health concerns related to COVID-19, the Regional Director postponed the manual election. *See* Exhibit A, p. 2. Following the inability of the parties to agree on the method of conducting the election, the Regional Director revoked the Stipulated Election

Agreement on April 23 and ordered a hearing regarding the method of conducting the election. *See* Exhibit A, p. 2. A hearing officer of the Board conducted a telephonic hearing on May 4, and the Regional Director's Decision followed, which ordered a mail-ballot election. *See* Exhibit A *generally*.

III. LEGAL STANDARD

“[U]nder existing Board precedent and policy the applicable presumption favors a manual election, not a mail-ballot election.” *Willamette Indus., Inc.*, 322 NLRB 856, 856 (1997). Although the Board has delegated discretion to the regional directors in determining whether an election should be conducted by manual balloting or mail balloting, such discretion “is not unfettered and is to be exercised within certain guidelines.” *See San Diego Gas & Elec.*, 325 NLRB 1143, 1144 (1998). “Because of the value of having a Board agent present at the election, the Board’s long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.” *Id.*

The Board has provided guidance to the regional directors in the exercise of this discretion and found that the following three situations would

normally suggest the propriety of using mail ballots: (1) where eligible voters are ‘scattered’ because of their job duties over a wide geographic area; (2) where eligible voters are ‘scattered’ in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

See id. at 1145 (internal footnote omitted). Additionally, the Board has found that unless “extraordinary circumstances” are present, the Board expects that the regional directors will exercise their discretion in ordering a mail-ballot election in accordance with the above guidelines. *See id.*

IV. ARGUMENT

- A. The Board’s presumption in favoring a manual election should apply in the instant matter because the circumstances are significantly different from the Board’s recent decisions in upholding mail-ballot elections due to COVID-19, one of which the Regional Director relied upon heavily in his Decision.**

The Regional Director ignored the Board’s long-standing rule that a manual-ballot election is the preferred method to conduct a representative election as compared to a mail-ballot election. Pursuant to Section 102.67 of the NLRB’s Rules and Regulations, the Board will grant a request for review, among other times, when “a substantial question of law or policy is raised because of . . . [a] departure from, officially reported Board precedent.” 29 C.F.R. § 102.67(d)(1)(ii). Here, by ordering a mail-ballot election, the Regional Director’s Decision constitutes a departure from the Board’s precedent of favoring a manual election. *See San Diego Gas*, 325 NLRB at 1144; *Willamette Indus.*, 322 NLRB at 856.

In determining that a mail-ballot election was appropriate in the instant matter, the Regional Director relied heavily upon the Board’s recent decision in *Atlas Pac. Eng’g Co.* *See* Exhibit A, p. 7–8. In *Atlas*, the Board denied the employer’s request for review on grounds that the regional director did not abuse her discretion in order a mail-ballot election due to COVID-19. However, the Regional Director in the instant matter failed to consider a significant difference between the instant matter and *Atlas*. Specifically, the bargaining unit in *Atlas* consisted of 90 employees (*see Atlas*, Case 27-RC-258742, Decision and Direction of Election, 1 (Apr. 22, 2020)), whereas SEC’s bargaining unit consists of only 10 employees (*see Seminole Elec. Coop., Inc.*, Case 12-RC-256815, Decision and Direction of Election, 1 (May 18, 2020)). In other words, the number of employees who are voting in the instant election is 11% of the number of employees who would have been required to report for a manual election in *Atlas*. Thus, the circumstances

surrounding the instant election are significantly different from the circumstances surrounding the election in *Atlas*, in which the Regional Director relied heavily in support of his Decision.

Similarly, the significant reduction in the number of employees voting in SEC's bargaining unit is consistent when compared to the two other Board decisions that the undersigned has located in which the Board has denied the employers' request for review of the regional director's decision to conduct a mail-ballot election due to COVID-19. In those other two cases, the bargaining unit consisted of (1) 149 employees (*see Johnson Controls, Inc.*, Case 16-RC-256972, Decision and Direction of Election, 2 n.3 (May 7, 2020)); and (2) 84 employees (*see Touchpoint Support Servs., LLC*, Case 07-RC-258867, Decision and Direction of Election, 1 (May 4, 2020)). Significantly, the bargaining unit members for SEC represent 6.71% of the bargaining unit members in *Johnson Controls* and 11.9% of the bargaining unit members in *Touchpoint*. As such, due to the very limited number of voting individuals, the instant situation allows for SEC to conduct a safe manual election in which all of the individuals present at the election site can be protected from the risks of COVID-19.

In fact, the Regional Director conceded that SEC's proposal for a manual election "includes certain elements that would tend to make a manual election safer." *See* Exhibit A, p. 8. Notably, this determination did not even consider that the number of individuals voting is significantly less than the number of individuals voting in *Atlas*, which the Regional Director heavily relied upon. While recognizing the significance of COVID-19, SEC asserts that it can still conduct a safe manual election at SEC's facility, particularly in light of only ten members representing the entire bargaining unit. *See* Exhibit A, p. 5. Specifically, as outlined in the Regional Director's Decision, SEC

proposes to use a large conference center that is adjacent to the main facility and that has a separate entrance apart from the reception area of the main facility. The conference center has the capability to be broken up by movable walls and is not

currently being used. Because of its size, [SEC] maintains that the conference room is particularly well-suited for enforcement of the CDC's social distancing guidelines. Additionally, [SEC] proposes an hour-long voting period to permit sufficient time for employees to maintain physical separation. Finally, [SEC] argues that a manual election should not be held until the first or second week of June, in part to allow additional time for the Governor's phased re-opening guidelines to take effect.

See Exhibit A, pp. 5–6. Thus, by providing a way to permit a manual election to occur that would fully protect the health, safety, and welfare of all of the individuals involved, SEC has negated the existence of any “extraordinary circumstances,” which warrants the ordering of a manual election.

None of the three typical situations in which the Board has recognized the appropriateness of a mail-ballot election are present here. *See San Diego Gas*, 325 NLRB at 1145. Rather, it is clear that the Regional Director's Decision to conduct a mail-ballot election is strictly due to the “extraordinary circumstances” exception in *San Diego Gas*. *See* Exhibit A, pp. 7–8 (“Given the extraordinary circumstances caused by the spread of COVID-19 that still face the State of Florida, I find it appropriate to exercise my discretion to direct a mail ballot election.”). However, the Regional Director failed to consider important facts that mitigate against a finding of “extraordinary circumstances” to warrant a mail-ballot election—specifically, the very limited number of individuals in the bargaining unit.

Further, the Regional Director failed to consider the interpersonal interactions that will be required during the mail-ballot election. Specifically, the Regional Director's Decision requires ballots to be mailed to voters by the NLRB from the Region 12 office in Tampa on May 28, 2020. *See* Exhibit A, p. 11. Additionally, the Regional Director's Decision calls for all ballots to be comingled and counted at the Region 12 office in Tampa on June 18, 2020. *See* Exhibit A, p. 11. As such, the Regional Director's Decision inherently requires NLRB employees to congregate together at the Region 12 offices on two separate occasions—to mail the ballots and then to count the ballots. Further, this requirement conflicts with the Regional Director's reliance in ordering a

mail-ballot election on grounds that Region 12 employees are teleworking and would be unable to conduct a manual election. *See* Exhibit A, p. 7 n.6. The Regional Director’s Decision clearly requires Region 12 employees to report to the Tampa offices, which would prohibit their teleworking.

Lastly, the Regional Director failed to consider the unreliability of the postal system due to COVID-19. According to the United States Postal Service (the “USPS”), it has experienced minor operational impacts as a result of COVID-19. *See* USPS Service Alert, which is attached hereto as Exhibit B. Even if a single individual in the bargaining unit experiences an “operational impact[.]” due to the issues facing the USPS, such individual will be prohibited from exercising his guaranteed right to vote as protected by the National Labor Relations Act (the “NLRA”).

The Board has recognized that “voter participation rate is generally higher in elections conducted manually than in mail ballot elections.” *See San Diego Gas*, 325 NLRB at 1146; *see also Cast N. Am. (Trucking) Ltd. v. NLRB*, 207 F.3d 994, 1000 n.2 (7th Cir. 2000) (“The NLRB has noted that historically voter turn out has been higher in representation elections that are conducted manually than in those conducted by mail ballot.”). Thus, based upon the limited number of employees in SEC’s bargaining unit, the failure of even one employee to return a mail ballot would have a significant impact on the final results. As one of the main purposes of the NLRA is to ensure that all employees have the opportunity to exercise their voting rights, it is incumbent upon the Board to grant SEC’s Request for Review of the Regional Director’s Decision. Given the unique set of underlying facts, there are no “extraordinary circumstances” warranting the Regional Director’s deviation from the Board’s long-standing preference of conducting a manual election.

B. The instant circumstances present a compelling reason for the Board to reconsider an important Board rule or policy.

In a recent case, the Board has recognized that there are “many potential problems inherent in mail ballot elections.” *See Western Wall Sys., LLC*, Case 28-RC-247464, Order, 1 n.1 (Apr. 16, 2020).¹ Thus, the Board has stated in several recent cases that “[t]he Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.” *See Touchpoint*, Case 07-RC-258867, Order, 2 n.1; *Johnson Controls*, Case 16-RC-256972, Order, 1 n.1 (same); *Atlas*, Case 27-RC-258742, Order, 1 n.1 (same); *Western Wall*, Case 28-RC-247464, Order, 1 n.1 (same). Pursuant to Section 102.67 of the NLRB’s Rules and Regulations, the Board will grant a request for review, among other times, when “there are compelling reasons for reconsideration of an important Board rule or policy.” 29 C.F.R. § 102.67(d)(4).

Here, in light of the Board’s recognition of inherent problems with mail ballots, and the proliferation of recent mail ballots required by the regional directors due to COVID-19, the Board has the opportunity to provide guidance on when mail-ballot elections are appropriate due to COVID-19. There should not be a “one size fits all” approach to conducting representative elections during COVID-19, particularly due to the uncertainty as to how long the public will be faced with the COVID-19 situation. If an employer can conduct a safe manual election by taking the required precautions—as is the case with SEC—the Board’s established presumption in favor of manual elections should stand. Due to the extremely limited number of voting individuals, as well as the Regional Director’s concession that SEC’s proposal for a manual election would make a manual election safer, this case provides the Board with an opportunity to address the appropriateness of mail-ballot elections moving forward in the face of COVID-19.

¹ This recognition by the Board is nothing new as it has long been known that there are potential problems with maintaining the integrity of a mail-ballot election. *See Thompson Roofing, Inc.*, 291 NLRB 743, 743 n.1 (1988) (stating that “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over the employees’ voting”).

V. **CONCLUSION**

Based upon the foregoing, SEC respectfully requests review of the Regional Director's Decision.

May 22, 2020

Respectfully submitted,

/s/ Mark E. Levitt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 22, 2020 a true and correct copy of the foregoing Employer's Request for Review of the Regional Director's Decision and Direction of Election was e-filed with the National Labor Relations Board and was served upon the following:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

SEMINOLE ELECTRIC COOPERATIVE, INC.

Employer

and

Case 12-RC-256815

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 108, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

International Brotherhood of Electrical Workers, Local 108, AFL-CIO, (the Petitioner) seeks to represent a unit of all full-time system coordinators, including associate system coordinators, system coordinators I, and system coordinators II employed by Seminole Electric Cooperative, Inc. (the Employer), excluding all other employees, office clerical employees, managers, guards and supervisors as defined by the National Labor Relations Act (the Act).¹ There are 10 employees in the unit sought by Petitioner. The parties have stipulated, and I find, that the agreed upon unit set forth above is appropriate for the purposes of collective-bargaining.

A hearing was held telephonically on May 4, 2020,² before a hearing officer of the National Labor Relations Board (the Board). The only issue presented in this matter, as discussed in more detail below, is how and when the election should be conducted. The

¹ The parties stipulated, and I find, that at all material times the Employer has been a Florida corporation with facilities throughout the State of Florida, including an office and place of business located at 16313 N. Dale Mabry Highway, Tampa, Florida, where it is engaged in business as a public utility. During the past 12 months, in the course and conduct of its business, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its Florida facilities goods valued in excess of \$50,000 directly from points located outside the State of Florida; thus the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act and is subject to the jurisdiction of the Board. Finally, the parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

² Hereinafter all dates occurred in 2020, unless otherwise noted.

Petitioner seeks a mail ballot election, whereas the Employer prefers a manual election. I have carefully considered the positions and arguments presented by the parties. For the reasons discussed below, I find that a prompt mail ballot election is appropriate given the extraordinary circumstances presented by the COVID-19 pandemic.

I. PROCEDURAL BACKGROUND

The instant petition was filed by Petitioner on February 21. On March 4, the parties executed a Stipulated Election Agreement, which I approved on that date, providing for a manual election to be conducted on March 24 at the Employer's premises. Shortly thereafter, the World Health Organization (WHO) declared that the increasing spread of the novel coronavirus is a pandemic, and the Governor of Florida declared a state of emergency. Accordingly, on March 18, I issued an Order postponing the election due to the safety and health concerns related to the COVID-19 pandemic. The parties did not agree on a proposed amendment of the Stipulated Election Agreement to provide for a mail ballot election.

On April 23, I revoked the Stipulated Election Agreement, finding that a manual election, at that time, would endanger the health and safety of the Employer's employees, the parties, Board personnel, and the public-at-large because of the rapid spread of the novel coronavirus. As discussed in more detail below, a safer-at-home order had been issued in the State of Florida limiting travel within the State. In addition, I ordered a hearing regarding the method of conducting an election.

II. FACTS

At the outset, I take administrative notice of the pandemic health situation that exists in the United States, and continues to affect the way that individuals, businesses, organizations, and governments conduct their daily operations. As referenced above, on March 11, the COVID-19

outbreak was characterized as a pandemic by the WHO and the Governor of Florida declared a state of emergency. On April 29, the Governor issued Executive Order Number 20-112, for the State of Florida's Phase 1 plan for re-opening its economy. While it permits certain types of business to reopen partially, this Order continues to prohibit groups of people greater than ten from congregating, orders all persons in Florida to avoid nonessential travel, and further recommends that all persons in Florida continue to limit their personal interactions outside the home. Further, Executive Order 20-112 directed all businesses that remained open during non-essential business closures to follow safety guidelines issued by the CDC and continue the use of employee screening or use of personal protective equipment if necessary. For businesses that will re-open, the Governor has directed that they ensure proper social distancing and take the appropriate precautionary measures. Subsequently, on May 8, the Governor extended the state of emergency in Florida that has been caused by the coronavirus for 60 days.

I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States government.³ The CDC states:

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).

.... the virus has also been detected in asymptomatic persons.⁴

The CDC also recommends the avoidance of gatherings of more than ten people, the use of cloth face coverings and social distancing, among other recommendations. Relevant to a mail

³ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

ballot election, the CDC further states that it is unlikely that the coronavirus will be spread from domestic or international mail, products or packaging.⁵

As noted above, the Employer's corporate office is in Tampa, Florida in Hillsborough County. The Employer also has a backup control facility in Pasco County, Florida, approximately 30 minutes north of the corporate office. Due to the COVID-19 pandemic, employees in the petitioned-for unit, who typically report to the corporate office in Tampa, were relocated to the Pasco County facility as part of the Employer's social distancing plan. As of the May 4 hearing, the employees who were temporarily moved to the Pasco County facility were due to return to work at the Tampa office on May 8, subject to change.

The petitioned-for employees work staggered 12-hour shifts. At the time of the May 4 hearing, the Employer's employees were not wearing masks at work. At that time, the Employer was not aware of any employees or family members of employees that have tested positive for COVID-19.

III. POSITION OF THE PARTIES

The Petitioner argues that a mail ballot election is appropriate in these extraordinary circumstances, and that the mail ballot should follow typical Board procedures for conducting elections by mail. Moreover, the Petitioner raises concerns related to a manual election being held during a pandemic, including whether employees will feel comfortable showing up to vote, the safety of all participants, and whether proper social distancing can be maintained where all voters and participants will necessarily share the same space. In further support of its argument for a mail ballot election, the Petitioner notes the uncertain future surrounding the COVID-19

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

pandemic. Finally, the Petitioner maintains that the counting of ballots should be accomplished through video meeting technology such as Skype or FaceTime.

The Employer asserts that it is appropriate to conduct a manual election notwithstanding the COVID-19 pandemic. To begin with, the Employer argues that mail ballot elections lack the inherent control of a manual ballot election, where the election is supervised by a Board agent who controls the ballots, the voting environment, and ballot box, and who conducts the vote count in-person immediately after the voting period has ended, whereas a mail ballot involves uncertainties surrounding mail processing and distribution. Further, in the Employer's view, the circumstances here are not akin to the generally recognized situations that make mail ballot elections appropriate, such as when employees are scattered due to their work locations or work schedules, or where a strike, picket, or lock-out would interfere with an in-person election. Additionally, the Employer claims that a mail ballot election effectively silences an employer because it cannot hold meetings with employees during the voting period.

The Employer acknowledges the extraordinary circumstances facing the State of Florida and the United States as a whole, but argues that a manual election can be held safely at the Employer's facility. It proposes to use a large conference center that is adjacent to the main facility and that has a separate entrance apart from the reception area of the main facility. The conference center has the capability to be broken up by movable walls and is not currently being used. Because of its size, the Employer maintains that the conference room is particularly well-suited for enforcement of the CDC's social distancing guidelines. Additionally, the Employer proposes an hour-long voting period to permit sufficient time for employees to maintain physical separation. Finally, the Employer argues that a manual election should not to be held until the

first or second week of June, in part to allow additional time for the Governor's phased re-opening guidelines to take effect.

If a mail ballot election is directed, the Employer asserts that a three-week voting period is needed to account for any delays with mail processing and distribution. Regarding the mechanics of the mail ballot vote count, the Employer prefers an in-person count to a video count.

IV. ANALYSIS

The determination of the method of election is within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual (Part Two), Representation Proceedings, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

A Regional Director's exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned "unless a clear abuse of discretion is shown." *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4. Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the

following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (2) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it also recognizes that deviation from those guidelines may occur in extraordinary circumstances. *San Diego Gas & Electric*, 325 NLRB at 1145.

The Board applied the guidelines in *San Diego Gas & Electric* to the extraordinary circumstances created by the COVID-19 pandemic in an unpublished Order issued in *Atlas Pacific Engineering Company*, Case 27-RC-258742 on May 8. In that case the Regional Director directed a mail ballot election notwithstanding the employer's argument that a manual election could be safely accomplished at its facility. The Board denied the employer request for review of the Regional Director's Decision and Direction of Election, stating:

[i]n finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency's assessment of current COVID-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

Due to the current environment caused by the pandemic, the Board found that the Regional Director did not abuse her discretion in relying on the "extraordinary circumstances" language of the Board's decision in *San Diego Gas & Electric* to order a mail ballot.⁶ Given the

⁶ As was the case with the Board agents in the Board's Denver Colorado office in *Atlas Pacific Engineering Company*, Case 27-RC-258742, the Board agents assigned to the Region 12 office in Tampa, Florida, who will conduct the election herein, are mandated to telework.

extraordinary circumstances caused by the spread of COVID-19 that still face the State of Florida, I find it appropriate to exercise my discretion to direct a mail ballot election.

In making this determination I acknowledge that the Employer's proposal for a manual election includes certain elements that would tend to make a manual election safer. However, a manual election would still involve a pre-election in-person meeting between the Board agent, one observer from each party (if the parties chose to designate observers, which is usually the case), and possibly with the parties' counsels or other representatives, for the purpose of the Board agent and parties examining the polling area, the Board agent setting up the voting booth, posting "Voting Place" signs, distributing badges, providing written and verbal instructions to the observers, answering any questions from the observers, confirming arrangements for voter release, discussing any last-minute changes to the voter list, and preparing and sealing the ballot box in the presence of the parties.⁷ In addition, throughout the polling period, the Board agent and observers would be present, in fairly close proximity, in order to check the voter list as employees periodically arrive to vote,⁸ and multiple voters would have to enter the same voting booth, likely touching the same surfaces within a short period of time. The ballot count sought by the Employer would necessitate a similar gathering.

These circumstances could present difficulties in preventing the spread of the coronavirus if any of those involved are infected and, as noted, persons may be infected without knowing it because they are asymptomatic and/or have not been tested for the virus. Manual polling may also raise difficult questions about the use of face masks and/or other personal protective equipment, including whether voters or others can be required to use such equipment. Although

⁷ See Section 11318 through 11318.4 of the Board's Casehandling Manual Part Two, Representation Proceedings.

⁸ See Section 11322.1 of the Board's Casehandling Manual Part Two, Representation Proceedings.

the Employer's plan for a manual election includes asking participants to use protective face coverings, the Employer also questioned whether the Board could require participants to do so. This demonstrates the inherent difficulties in adhering to the CDC and State of Florida guidelines regarding proper social distancing and wearing face coverings.

Whether or not such equipment is used, for the reasons noted above, it is apparent that a mail ballot election is the safer method of voting and is well suited to effectuating the purposes and policies of the Act during the COVID-19 pandemic, which does not appear to be abating to the extent necessary to hold a safe manual election in the near future. Steps such as those suggested by the Employer that modify the usual procedures for a manual election may make a manual election somewhat safer, but even with such precautions, a manual election appears to present a substantially greater risk of spreading the coronavirus than a mail ballot election.

The Employer's remaining arguments favoring a manual election over a mail ballot election are unavailing. "From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail." See *London Farm Dairy*, 323 NLRB 1057 (1997) (internal citations omitted). Furthermore, the Board has previously rejected arguments that mail ballot elections lack the requisite oversight and that they are ripe for voter coercion and lower voter participation. See *San Diego Gas & Electric*, 325 NLRB at 1146; *London Farm Dairy*, 323 NLRB at 1058. Similarly, the Board has considered, and rejected, arguments that an employer is effectively silenced and prohibited from giving mass captive audience meetings. According to the Board:

[w]e note that during the *Peerless Plywood*⁹ period, the employer and its agents remain free to continue to campaign against the union not only through mailings to employees at their houses, but also in the workplace, when they can distribute and post literature, communicate with employees one-on-one, and even continue

⁹ 107 NLRB 427 (1953).

to conduct mass meetings, as long as the meetings are on the employees' own time and attendance is not mandatory.

San Diego Gas & Electric, 325 NLRB at 1146, citing *Livingston Shirt Corp.*, 106 NLRB 400, 408 (1953).

For the foregoing reasons, I direct a mail ballot election to be conducted in accordance with the election details discussed below.

V. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction therein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. No collective-bargaining agreement covers the employees in the petitioned-for-unit, and no other bar exists to conducting an election.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time system coordinators, including associate system coordinators, system coordinators I, and system coordinators II employed by the Employer; excluding all other employees, office clerical employees, managers, guards and supervisors as defined by the National Labor Relations Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 108, AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At **9:30 a.m. on May 28, 2020**, ballots will be mailed to voters by the National Labor Relations Board, Region 12, from its office at **201 E. Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824**. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **June 5, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 12 Office at **(813) 228-2665** or **(813) 228-2661** or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the **Region 12 office, 201 E. Kennedy Blvd., Suite 530, Tampa, Florida** on **June 18, 2020**, at **10:00 a.m.** In order to be valid and counted, the returned ballots must be received in the **Region 12 office** prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the COVID-19 pandemic, I

further direct that the ballot count will be conducted remotely, by video technology (such as iPhone FaceTime or Skype).

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on May 15, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 20, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted.¹⁰ The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it

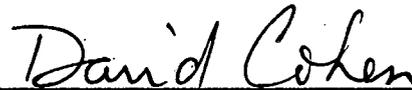
¹⁰ As noted in this Decision, the record reflects that employees in the petitioned-for unit were relocated to an Employer facility in Pasco County, Florida, and that those employees were still operating out of that location as of the hearing date. If petitioned-for employees are still reporting to the Employer's Pasco County facility, the Notice of Election should be posted in conspicuous places at that facility as well, including all places where notices to employees in the unit found appropriate are customarily posted.

did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 18, 2020.



David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

Service Alerts

Last update: May 21, 2020, 12:30 p.m.

The United States Postal Service is closely monitoring the Coronavirus Disease 2019 (COVID-19) situation and continues to follow strategies and measures recommended by the Centers for Disease Control and Prevention (CDC) and public health departments. The CDC has information available on its website at <https://www.coronavirus.gov> that provides the latest information about COVID-19. We are sharing the CDC's guidance to our employees via stand-up talks, employee news articles, messages on bulletin boards, videos and an intranet site directly to employees and within USPS workplaces.

The CDC (<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>), the World Health Organization (<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>), and the Surgeon General have indicated that there is currently no evidence that COVID-19 is being spread through the mail.

The Postal Service has so far experienced only minor operational impacts in the United States as a result of the COVID-19 pandemic. We do continue to have a temporary suspension of the guarantee on Priority Mail Express International destined for China and Hong Kong, which has been effective since Monday, Feb. 10, 2020, due to widespread airline cancellations and restrictions into this area. In addition, customers may see delays in mail and packages destined to China as well as from China, as well as to and from European countries subject to restricted passenger airline travel. The Postal Service is undertaking all reasonable measures to minimize the impact to our customers.

In addition, the Postal Service is an essential service for purposes of its compliance with state or municipality shelter-in-place orders or other social distancing restrictions. The Postal Service delivers medications, social security checks, and is the leading delivery service for on-line purchases. The statute that created the Postal Service begins with the following sentence. "The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by an Act of Congress, and supported by the people." 39 U.S.C. §101(a).

For more information, see the [USPS Coronavirus Statement](#).

USPS Continuity of Operations Updates:

- [Military and Diplomatic Mail \(APO/FPO/DPO\) Service Disruptions](#) (May 20, 2020)
- [International Service Impact – Alternate Transport: Third Air to Sea Diversion in Effect](#) (May 15, 2020)
- [Handling mail for temporarily closed businesses – Hold Mail extended through May 30, 2020](#) (April 30, 2020)
- [International Service Impact – Alternate Transport: Second Air to Sea Diversion in Effect](#) (April 29, 2020)
- [International Service Impact – Alternate Transportation: Air to Sea Diversion in Effect](#) (April 23, 2020)
- [Links for the Most Current Information and Answers to Your Questions](#) (April 21, 2020)
- [Expected Delivery Changes for Priority Mail and First-Class Package Services](#) (April 17, 2020)
- [Refunds for Items to International Countries where Service Has Been Suspended](#) (April 16, 2020)
- [Mail Delivery Return to Sender Timeframe Extension](#) (April 14, 2020)
- [Mailability of Hand Sanitizer Update](#) (April 14, 2020)
- [Help Desk Contingencies](#) (April 9, 2020)
- [Diplomatic Mail](#) (April 9, 2020)
- [Mailability of Hand Sanitizer Update](#) (April 7, 2020)
- [Help Us Serve You \(Retail and Carrier Safety\) – Videos Available for Your Use](#) (April 6, 2020)
- [Media Statement COVID-19](#) (April 3, 2020)
- [CASS Cycle O – Delayed Due to COVID-19](#) (April 3, 2020)
- [Effects on Regualification Efforts for Periodicals](#) (April 2, 2020)
- [Detached Mail Unit \(DMU\) Health Screening – Requests for Bulk Mail Techs/Clerks \(April 1, 2020\)](#)
- [Policy for Customers Requiring Visitor Medical Screenings for Letter Carriers](#) (March 31, 2020)
- [Business Closed – Hold Mail](#) (March 28, 2020)
- [Safety of the Mail](#) (March 23, 2020)
- [USPS and Mail Supply Chain Essential Government Services](#) (March 23, 2020)
- [Customer Signature Service COVID-19 Response and Prevention](#) (March 20, 2020)
- [USPS Continuity of Operations Update](#) (March 19, 2020)
- [Monitoring the Coronavirus Disease 2019 \(COVID-19\)](#) (March 18, 2020)

USPS Service Alerts have information for consumers, small businesses and business mailers about postal facility service disruptions caused by weather-related and other natural disasters or events.

Visit www.ready.gov or www.listo.gov to prepare for hurricanes and severe weather.

Service disruptions

Residential customers and small businesses can find out if mail is being delivered, or if their Post Offices are open. Business mailers get more detailed information about USPS mail processing facilities, and the operating status of delivery units, as well as any impacts on mail delivery overseas.



Residential customers

[Current delivery issues](#)

[Coronavirus FAQs for residential customers](#)

[Change delivery address](#)

[Put mail delivery on hold](#)



Business mailers

[Current processing/delivery issues](#)

[Coronavirus FAQs for business customers](#)

[Not accepting drop shipments](#)

[Mail Service Disruption Report](#)

[Service alert mapping](#)



International

[Delivery issues around the world](#)

[International Posts Action Log](#)

[Japan money orders](#)

[Shipping lithium batteries](#)

Contact us

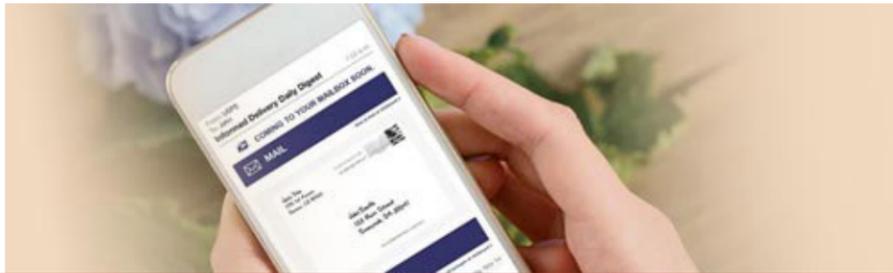
Residential customers

Residential customers should check this Mail Service Disruptions website first for current, frequently-updated information about whether mail is being delivered to your neighborhood or if your local Post Office is open. Or you can call our customer service center at 1-800-ASK-USPS (800-275-8777).

Business mailers

Contact the Business Service Network *headquarters* communications manager for additional information or to report a disruption. Email us at mailserviceupdate@usps.gov.

Need more support? Have questions? Contact your *local* Business Service Network or visit [PostalPro](#).



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